Summary: EPA Evaluation of
New York Draft Watershed Implementation Plan

Rating for Gap-Filling Strategies: **Serious Deficiencies**
WIP Numbers Compared to 7/1 and 8/13 Allocations: N 15% and P 14% over; TSS 17% under
Backstop Allocations in Draft TMDL that will remain in final Phase I WIP not strengthened:

- **High level backstop allocations** for New York point sources
  - WWTPs: limit of technology (3 mg/L TN and .1 mg/L TP) and design flow for significant municipal plants
  - MS4s: 50% of urban MS4 lands meet aggressive performance standard through retrofit/ redevelopment; 50% of unregulated land treated as regulated, so that 25% of unregulated land meets aggressive performance standard; designation as necessary
  - Construction: Erosion and sediment control on all lands subject to Construction General Permit
  - CAFO production areas: Waste management, barnyard runoff control, mortality composting. Precision feed management for all animals. Same standards apply to AFOs not subject to CAFO permits EXCEPT no feed management on dairies; designation as necessary.
  - Additional reductions from agricultural nonpoint sources necessary to meet July 1 and August 13 nutrient and sediment allocations that EPA will ensure occurs through additional federal backstop actions
- **Finer scale wasteload and load allocations** (same level of detail as tidal states) to ensure NPDES permits will be consistent with Chesapeake Bay TMDL wasteload allocations

Overview

- Implementation identified in the WIP considered "stretch" estimates that assume current funding (including Farm Bill) and implementation levels through 2025, increasing the reasonable assurance that implementation would be achieved.
- However, WIP commitments based on current resources do not reduce loads enough: nitrogen and phosphorus are 15% and 14 % higher than 7/1 allocations.
- New York maintains that due to its high percentage of forested land and low intensity agriculture, it is impossible to achieve its current allocations. However, allocations are based on loads that are 52% of the way between a pre-BMP condition and the maximum level of practices that could be applied to nutrient and sediment sources in New York. The full application of available controls would achieve more than the necessary reductions
- No proposals to increase levels of funding or regulatory requirements for any program and insufficient detail on how most enhancements to current programs will be implemented

Wastewater: Serious Deficiencies in Gap-Filling Strategies

<u>Key Areas for Improvement and Opportunities for Strengthening Phase I WIP</u>

- Least aggressive proposed treatment levels for significant wastewater treatment plants
  - Newly upgraded Binghamton plant achieves 4-6mg/l N, but WIP input deck has all other significant plants at 9.7 mg/L TN and 0.7 mg/L TP. WIP document states other significant wastewater treatment plants will only treat to 12 mg/L TN.
- Explain how load from non-significant WWTPs will be accounted for in the WLA.

Agriculture:[1] Serious Deficiencies in Gap-Filling Strategies

Strengths

- CAFO program applies to significantly more operations than federal CAFO program and, together with its AEM voluntary program. Covers 95% of dairies in the state.

Key Areas for Improvement and Opportunities for Strengthening Phase I WIP

- No proposal or commitment to implement any enhanced technical requirements (i.e., manure storage and transfer systems, vegetated treatment areas, Enhanced P Index standards using VSA hydrology, manure emission controls etc.). High implementation rates unlikely if relying only on voluntary programs
- Could incorporate high priority practices, including precision feeding into state technical standards for CAFOs
- Given that enforcement is NY's only contingency plan, provide more detailed information on: 1) current frequency of inspections; 2) inspection results; and 3) penalties
- Could include how CBRAP grant will be used to enhance state regulatory programs

Urban Stormwater: Serious Deficiencies in Gap-Filling Strategies

Strengths

- 2010 MS4 2010 permit extends coverage to municipal boundaries.
- Adopted new law in 2010 limiting residential fertilizer containing phosphorus.

Key Areas for Improvement and Opportunities for Strengthening Phase I WIP

- 2010 MS4 permit for new and redevelopment standards lacks the detail to demonstrate that it is aggressive enough to result in 15% reduction in nitrogen loads from urban lands. To achieve these reductions through the MS4 permit, it would need a strong, unqualified, enforceable performance standard and environmental objective. Referencing a manual is inadequate unless there are very tight performance standards and the permit, by reference, ensures enforceability.
- Describe a strategy to use residual designation authority (RDA) or other mechanism to regulate additional discharges if assuming additional reductions from unregulated urban lands
- Describe a retrofit program with strong performance standards and enforceable requirements, even if as contingency. "Considering" it and proposing guidance without additional details is not adequate if New York intends to achieve reductions from existing urban lands.
- Could consider more controls on state and county roads to reduce loads from impervious surfaces outside MS4 communities through enforceable or otherwise binding commitments.

Forest[1]

- Under the draft TMDL allocations, forest is the largest sector contributing nitrogen to the Bay, in part because of atmospheric deposition that New York cannot fully control

[1] Focus on nitrogen because it is the most difficult allocation for NY to meet given: 1) NY cannot significantly reduce air deposition on its primarily forested landscape; and 2) local programs focus on phosphorus and sediment reduction, which provide greater benefits to local waters than nitrogen reductions.